IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2651 OF 1991

Kashinath Bahiru Pawar ....Petitioner
V/s
Tukaram Nana Kshirsagar deceased by his heirs.... .....Respondents.

Smt.Vandana Deshpande, Adv. For the petitioner.

Mr.K.V.Saste, Adv. For respondent Nos.1A to 1D.

Mr.Pradeep Singate, Adv. For respondent No.2A.

CORAM: A.P.DESHPANDE, J.
8/8/07

PC:

Land admeasuring 21 gunthas situated at village Tambave in Karad Taluka, district Satara is the subject matter of the present writ petition. The respondents are the legal representatives of the original plaintiff. The plaintiff filed a suit for redemption of mortgage of said land against the present petitioners bearing Civil Suit No.422/68. The suit was dismissed by the Civil Judge, Junior Division and aggrieved thereby the plaintiffs preferred Civil Appeal No.475/69 before the District Court. The District Judge by its judgment and decree dated 29.6.71 was pleased to allow the appeal and after setting aside the judgment and decree passed by the trial Court was pleased to allow the suit. The judgment and decree passed by the First Appellate Court came to be confirmed on dismissal of the Second Appeal by this Court vide judgment and decree dated 18.1.1979. This decree for redemption of mortgage and possession assumed finality.

2. The legal representatives of the decree holders filed regular

darkhast with a view to execute the decree. In the said darkhast decree holder claimed that the possession warrant be executed through DILR, as the execution of the warrant of possession involved question of identification of suit property. The application was opposed by legal representatives of the Judgment debtor by contending that on account of formation of block under the Bombay Prevention of Fragmentation and Consolidation and Holdings Act the suit property cannot be identified and hence application filed by the decree holder be rejected. The executing Court has held that this very objection about loss of identity of the property, was raised earlier and rejected. It has also held that as the property needs to be identified correctly, the decree holder is justified in seeking execution through DILR. Learned counsel for the petitioner has failed to demonstrate as to how come the impugned order is patently illegal which requires interference in exercise of writ jurisdiction. Hence writ petition is dismissed. Rule stands discharged.

8.8.07